

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ALVIN HOWARD CANELL,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS;  
SARA DEVENY (AHTANUM VIEW  
CORRECTIONS); KELLY WEST  
(ACCOUNTANT, AVCC); ROY  
GONZALES, DEPARTMENT OF  
CORRECTIONS; RISA KLEMME  
(AIRWAY HEIGHTS); OFFICER  
BAILEY (AIRWAY HEIGHTS  
PROPERTY OFFICER); MAGGIE  
MILLER-STOUT  
(SUPERINTENDENT AIRWAY  
HEIGHTS),

Defendants.

NO. CV-09-3054-RHW

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Before the Court is Defendants' Motion for Summary Judgment (Ct. Rec. 21). The motion was heard without oral argument.

In his complaint, Plaintiff asserts three claims: (1) deliberate indifferent to his serious medical needs; (2) violation of due process when his mail was destroyed after prison officials rejected it to prevent service of summons and complaint; (3) violation of due process and equal protection, and retaliation, in seizing funds from prison account to pay for indigent legal mail and legal copies.

At the time he filed the Complaint, he was an inmate at the Ahtanum View Corrections Center, in Yakima, Washington. Defendants removed the action to the

1 Eastern District of Washington on June 4, 2009. They now move for summary  
2 judgment.

### 3 STANDARD OF REVIEW

4 Summary judgment is appropriate when “there is no genuine issue as to any  
5 material fact and the movant is entitled to judgment as a matter of law.” Fed. R.  
6 Civ. P. 56. A material fact is one which might affect the outcome of trial under the  
7 governing law. *Lindahl v. Air France*, 930 F.2d 1434, 1436 (9th Cir. 1991)  
8 (citation omitted). The substantive law in the case is essential because it  
9 determines which facts are relevant to resolution of a case. *Anderson v. Liberty*  
10 *Lobby Inc.*, 477 U.S. 242, 248 (1986). response to summary judgment, the non-  
11 moving party may not rely on its pleadings, but must respond with “specific facts  
12 showing a genuine issue for trial.” Fed. R. Civ. P. 56. The non-moving party must  
13 present facts with probative value, which “tend to support[] the complaint.”  
14 *Anderson*, 477 U.S. at 249. The facts are to be read in the light most favorable to  
15 the non-moving party. *Horphag Research Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9<sup>th</sup>  
16 Cir. 2007). To show a genuine issue exists the party must show that a reasonable  
17 jury could find for his/her side. *Id.* The finding of a genuine issue of material fact  
18 does not need to be conclusive in favor of the party, but must show that a dispute  
19 as to the facts requires a trial to resolve the issue. *Id.* at 248-49. Therefore,  
20 summary judgement is only appropriate where there is no disagreement as to  
21 material facts which would require a jury to consider the facts or the facts are “so  
22 one-sided that the [one] party must prevail as a matter of law.” *Id.* at 251-52.

### 23 STATEMENT OF FACTS

24 Plaintiff’s claims surround three distinct factual scenarios. The facts are  
25 viewed in the light most favorable to Plaintiff, the non-moving party.

#### 26 1. Deliberate Indifference Claim

27 Plaintiff experienced a stroke in 2007. Because of the stroke and because of  
28 his diabetes, Plaintiff was issued a pair of specialty issue work boots in August,

1 2007. Generally, inmates are issued tennis shoes. A Health Status Report (HSR)  
2 is required for any type of footwear other than tennis shoes. A HSR was issued on  
3 August, 2007 at the Ahtanum View Corrections Center (AVCC) that was signed by  
4 a medical care provider that stated “needs properly fitted shoes for work boots.”

5 In January 14, 2008, Plaintiff was moved to Airway Heights (AHCC) to  
6 receive therapy.<sup>1</sup> He arrived at AHCC after 7 p.m. and remained in the infirmary  
7 for two days. On January 16, 2008, he was released to the general population and  
8 he went to the property room to retrieve his property. He asked Defendant Bailey  
9 for his boots, and she responded that the boots are not allowed, except for work.  
10 She believed the boots were contraband, and thus, she confiscated them. Plaintiff  
11 told Defendant Bailey that he had been transferred to AHCC because of a stroke  
12 and he was there for physical therapy. Plaintiff was not permitted to bring  
13 anything with him during the transfer.

14 Defendant Bailey called the AHCC medical department on January 14, 2008  
15 and was told that no HSR was available. In addition to confiscating the boots,  
16 Defendant Bailey also confiscated a pair of inserts, but these were returned to  
17 Plaintiff later on that same day. Plaintiff was given a pair of sneakers instead,  
18 which caused him pain and made it difficult to walk. Plaintiff injured himself  
19 many times because he was forced to wear the tennis shoes instead of the boots.

20 On January 24, 2008, Plaintiff was seen at AHCC medical and indicated that  
21 he would like to get some footwear. He was referred to physical therapy and was  
22 given a consult for his footwear. Plaintiff was seen on February 13, 2008 and he  
23 was fitted with diabetic shoes and inserts. Plaintiff was without his work boots  
24 from January 14, 2008 to February 13, 2008.

25 After the boots were confiscated on January 14, 2008, they could not later be  
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27 <sup>1</sup>There are no physical therapy facilities available at AVCC whereas AHCC  
28 has on-site rehabilitation services.

1 located in the Property Room.

2 **2. Mail Destruction/Restriction Claim**

3 In early 2008, Plaintiff sought to obtain funds from his family in order to  
4 serve the defendants with the summons and complaint in a lawsuit that had been  
5 filed in Spokane County Superior Court. His family sent him a letter in response,  
6 but on February 8, 2008, Defendants rejected the letter, stating that there was a  
7 grease stain on the envelope. Plaintiff attempted to resolve the issue by sending  
8 kites and letters to several prison officials. At some point, Plaintiff was told that  
9 the mail room could no longer find the confiscated letter.

10 In response to this lawsuit, Defendants investigated the matter further and  
11 found the confiscated letter. Defendant Klemme upheld the mail restriction  
12 because of the stains. The letter from his sister indicated that she was not in a  
13 position to send Plaintiff money.

14 **3. Payment for Legal Mail Claim**

15 It is undisputed that Plaintiff is a litigious prisoner. He has active legal cases  
16 in both the state and federal courts.

17 Plaintiff earns approximately \$50 a month from his prison job. He gets paid  
18 on the tenth day of every month. From this \$50, a percentage is taken out to pay  
19 various debts, including crime victims compensation, Legal Financial Obligations,<sup>2</sup>  
20 store debt, copy debt and legal mail debt.

21 Pursuant to Wash. Rev. Code § 72.09.450(1), if an inmate is indigent the  
22 inmate is not required to pay the cost of sending legal mail at the time the mail is  
23

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24  
25 <sup>2</sup>Legal Financial Obligation (LFOs) are specified by statute and are  
26 automatically taken from an offender's deposit at the time the deposit is posted to  
27 the offender's trust fund. Deductions are mandatory, and are not facilitated by an  
28 inmate's use of Request to Transfer Funds forms, or Postage Transfers. The  
deductions may not reduce the offender's account below the indigency level.

1 sent.<sup>3</sup> Rather, the cost of sending the legal mail is recorded as debt in the  
 2 prisoner's account. The prison is permitted to recoup the debt from the inmate's  
 3 account when the inmate is no longer indigent. § 72.09.450(2). The indigency  
 4 standard under state law requires that the amount of money on the day of the  
 5 withdrawal and thirty days prior should be below ten dollars. § 72.09.015(13).<sup>4</sup>

6 When sending legal mail, an inmate attaches a postage transfer slip to the  
 7 envelope that authorizes DOC to either take any money from his or her current  
 8 account to pay the postage. If the inmate is indigent the amount is recorded as  
 9 debt. The same policy applies for legal copies.

10 In November, 2008, Plaintiff had several copies made and tendered a  
 11 \_\_\_\_\_

12 <sup>3</sup>(1) An inmate shall not be denied access to services or supplies required by  
 13 state or federal law solely on the basis of his or her inability to pay for them.

14 (2) The department shall record all lawfully authorized assessments for  
 15 services or supplies as a debt to the department. The department shall recoup the  
 16 assessments when the inmate's institutional account exceeds the indigency  
 17 standard, and may pursue other remedies to recoup the assessments after the period  
 18 of incarceration.

19 (3) The department shall record as a debt any costs assessed by a court  
 20 against an inmate plaintiff where the state is providing defense pursuant to chapter  
 21 4.92 RCW. The department shall recoup the debt when the inmate's institutional  
 22 account exceeds the indigency standard and may pursue other remedies to recoup  
 23 the debt after the period of incarceration.

24 (4) In order to maximize the cost-efficient collection of unpaid offender debt  
 25 existing after the period of an offender's incarceration, the department is authorized  
 26 to use the following nonexclusive options: (a) Use the collection services available  
 27 through the department of general administration, or (b) notwithstanding any  
 28 provision of chapter 41.06 RCW, contract with collection agencies for collection of  
 the debts. The costs for general administration or collection agency services shall  
 be paid by the debtor. Any contract with a collection agency shall only be awarded  
 after competitive bidding. Factors the department shall consider in awarding a  
 collection contract include but are not limited to a collection agency's history and  
 reputation in the community; and the agency's access to a local database that may  
 increase the efficiency of its collections. The servicing of an unpaid obligation to  
 the department does not constitute assignment of a debt, and no contract with a  
 collection agency may remove the department's control over unpaid obligations  
 owed to the department.

Wash. Rev. Code § 72.09.450.

<sup>4</sup>(13) "Indigent inmate," "indigent," and "indigency" mean an inmate who  
 has less than a ten-dollar balance of disposable income in his or her institutional  
 account on the day a request is made to utilize funds and during the thirty days  
 previous to the request.

1 withdrawal slip, even though he had no money in his account at the time. Rather  
2 than process the transfer slip when it was received, Defendant West held the  
3 transfer slips until Plaintiff was paid on December 10, 2008. Consequently,  
4 Defendants withdrew Plaintiff's entire paycheck to cover the costs of the legal  
5 copies.

6 The withdrawal was made pursuant to a newly enacted policy regarding the  
7 payments for legal mail. Previously, Defendants processed the withdrawal on a  
8 daily basis, which in effect permitted the inmates to time their request for  
9 withdrawal to when they did not have money in their account. Defendants changed  
10 the policy to processing the transfer slips once a month and having the withdrawal  
11 coincide with the day the inmates are paid for their institutional work positions.

12 According to Plaintiff, this change in policy was in retaliation against  
13 Plaintiff due to his legal activities. He cites to an email written by Defendant West,  
14 in which she asks her supervisor if she can change the policy. Specifically, she  
15 writes:

16 Dan-I know that policy states that we must send out legal mail  
17 and make legal copies whether the offender has funds or not. If he has  
18 funds we take them, but if he doesn't we create a debt. Unfortunately  
19 the offenders are well aware of this policy and take advantage of it to  
the fullest degree. Many of our offenders here get paid, spend all their  
money on store and property purchases, and then submit a form for  
legal copies and legal mail.

20 My question is . . . is it written in policy that funds transfer  
21 forms will be process within a certain amount of time. I can't find it  
22 written anywhere. I would like to begin holding funds transfers for  
legal mail and legal copies for those offenders that we know will be  
receiving a paycheck and process them right after the paycheck so  
they are no longer able to manipulate the system.

23 For example: I have a funds transfer form right now for an  
24 offender in the amount of \$85.00 for legal copies and he has already  
submitted a request to his counsel for more copies that will amount to  
approximately another \$35.00. He currently has no funds, but will  
25 receive a \$55.00 paycheck on the 10<sup>th</sup>. He does this every month and I  
would like to wait until the 10<sup>th</sup> to process the funds transfer.

26 So . . . Can I do this without disregarding any policies.  
(Ct. Rec. 41, Ex. 20).

27 ///

## 28 DISCUSSION



1 Plaintiff is asserting three separate claims: (1) Deliberate indifference to  
2 medical needs; (2) Due Process - Confiscation and Loss of Mail; and (3) First  
3 Amendment, Due Process and Equal Protection - Change in Policy for Payment of  
4 Legal Mail. Each of these claims will be addressed in turn.

5 **1. Deliberate Indifference to Medical Needs**

6 Plaintiff alleges that Defendants were deliberately indifferent to his medical  
7 needs, and therefore violated his Eighth Amendment rights when Defendant  
8 confiscated Plaintiff's boots that had been medically prescribed to him to help with  
9 pain caused by diabetes and a stroke that made his right foot drag on the ground  
10 when he walked.

11 Deliberate indifference to an inmate's serious medical needs violates the  
12 Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Not every claim  
13 of inadequate medical treatment states a violation of that amendment. *Id.*  
14 "Medical treatment violates the Eighth amendment only when it is so grossly  
15 incompetent, inadequate, or excessive as to shock the conscience or to be  
16 intolerable to fundamental fairness."

17 Deliberate indifference is a high standard. To establish a claim for  
18 deliberate indifference to medical needs, Plaintiff must first show "a serious  
19 medical need" by demonstrating that "failure to treat a prisoner's condition could  
20 result in further significant injury or the 'unnecessary and wanton infliction of  
21 pain.' *Jett v. Penner*, 439 F.3d 1091, 1096 (9<sup>th</sup> Cir. 2006). Plaintiff must also  
22 show that the defendant's response to the need was deliberately indifferent. *Id.*  
23 This second prong is satisfied by showing (a) a purposeful act or failure to respond  
24 to a prisoner's pain or possible medical need and (b) harm caused by the  
25 indifference. *Id.* A negligent or "inadvertent failure to provide adequate medical  
26 care" alone does not state a claim under § 1983. *Id.*

27 Here, Plaintiff has not met his burden of showing triable issues of fact that  
28 Officer Bailey was deliberately indifferent to his medical needs. At best, Plaintiff

1 has shown that Officer Bailey was negligent in confiscating his boots. As such,  
2 summary judgment on his Eighth Amendment claim is appropriate.

3 **2. Due Process - Confiscation and Loss of Mail**

4 Plaintiff was denied access to a letter from his sister. He alleges that this  
5 denial violated his due process and that the officers were negligent in losing the  
6 letter.

7 The Court finds that this issue is moot. The letter was ultimately found and  
8 Defendant cannot show actual injury because the letter did not provide the money  
9 to assist him in serving his complaint. Moreover, Defendants have proffered a  
10 legitimate penological reason for rejecting the letter. As such, summary judgment  
11 with respect to Plaintiff's claim for the confiscated and missing letter is  
12 appropriate.

13 **3. First Amendment, Due Process and Equal Protection - Payment for**  
14 **Legal Mail**

15 Plaintiff alleges that his constitutional rights were violated as a result of a  
16 change in policy with respect to the processing of the payments for legal mail and  
17 copying, and because he was overcharged for envelopes.

18 **A. First Amendment**

19 With respect to the First Amendment claim, Plaintiff relies on two theories:  
20 (1) access to courts; and (2) retaliation.

21 **i. Access to Courts**

22 State prisoners have a right to access the courts. *Lewis v. Casey*, 518 U.S.  
23 343, 346 (1996). "[A]ccess to the courts means the opportunity to prepare, serve  
24 and file whatever pleadings or other documents are necessary or appropriate in  
25 order to commence or prosecute court proceedings affecting one's personal  
26 liberty." *Id.* at 384. To succeed on his access to courts claim, Plaintiff must show:  
27 1) the loss of a "nonfrivolous" or "arguable" underlying claim; 2) the official acts  
28 frustrating the litigation; and 3) a remedy that may be awarded as recompense but



1 that is not otherwise available in a future suit. *Christopher v. Harbury*, 536 U.S.  
2 403, 415 (2002). With respect to the first element, Plaintiff must demonstrate that  
3 official acts or omissions “hindered his efforts to pursue a [nonfrivolous] legal  
4 claim. *Lewis*, 518 U.S. at 351.

5 Here, Plaintiff has not pointed to any instance where his efforts were  
6 hindered because of the change in the policy or the price of the envelopes. As  
7 such, summary judgment on his right to access courts claim in favor of Defendants  
8 is proper.

## 9 **ii. Retaliation**

10 Plaintiff alleges that the change in policy and the overcharging for the  
11 envelopes was in retaliation for his exercising his First Amendment right to file  
12 civil litigation. Prisoners have a constitutionally protected right to not be retaliated  
13 against for exercising a First Amendment right to file civil litigation. *Schroeder v.*  
14 *McDonald*, 55 F.3d 454, 461 (9<sup>th</sup> Cir. 1995). Within the prison context, Plaintiff  
15 must establish five elements in order to successfully bring a First Amendment  
16 retaliation claim: “(1) an assertion that a state actor took some adverse action  
17 against an inmate (2) because of (3) that prisoner’s protected conduct, and that  
18 such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5)  
19 the action did not reasonably advance a legitimate correctional goal.” *Rhodes v.*  
20 *Robinson*, 408 F.3d 559, 567 (9<sup>th</sup> Cir. 2005).

21 Here, Plaintiff has not established that he has suffered an adverse action.  
22 The underlying issue is not whether Plaintiff is entitled to free legal mail. Rather,  
23 the question is whether he pays for it now, as the new policy requires, or later, as  
24 Plaintiff wants to do. The fact that Plaintiff has to pay for it now is not an adverse  
25 action that would support a claim for retaliation. Moreover, Plaintiff has not  
26 shown that the challenged action “did not reasonably advance a legitimate  
27 correctional goal.” The Washington statute clearly provides that inmates are  
28 required to pay for their legal mail. On the other hand, the statute provides a

1 mechanism under which truly indigent inmates are not prohibited from sending  
2 legal mail by deferring payment for the mail. Requiring inmates who are not  
3 indigent to pay for the legal mail is consistent with the statute and meets legitimate  
4 penological goals. Summary judgment in favor of Defendants on Plaintiff's  
5 retaliation claim is appropriate.

6 **B. Due Process**

7 Plaintiff also asserts that he has an interest in the \$.07 that he was  
8 overcharged by Defendants that is protected by the Due Process claim. Inmates do  
9 not have a constitutionally protected right to be able to purchase items from the  
10 commissary at a particular price or to prevent the charging of exorbitant prices.  
11 *See Tokar v. Armontrout*, 97 F.3d 1078, 1083 (8<sup>th</sup> Cir.1996)(stating that "we know  
12 of no constitutional right of access to a prison gift or snack shop"); *McCall v. Keefe*  
13 *Supply Co.*, 2003 WL 21716435 (10<sup>th</sup> Cir. 2003)(finding that inmate's allegation  
14 that he was overcharged for goods at the prison commissary failed to state a  
15 constitutional claim); *French v. Butterworth*, 614 F.2d 23, 25 (1<sup>st</sup> Cir.1980) (no  
16 legal basis exists for a demand that inmates be offered items for purchase at or near  
17 cost); *Lucas v. Rivera*, 2009 WL 902355 \*2 (D.S.C. March 31, 2009)(stating that  
18 "Plaintiff has no right protected by the constitution to buy items at the lowest price  
19 possible"); *Lineberry v. United States*, 2009 WL 499763 (E.D.Tex. Feb.27,  
20 2009)(rejecting inmate's claim that his constitutional rights were violated based  
21 upon the prison store charging excessive prices); *Hopkins v. Keefe Commissary*  
22 *Network Sales*, 2007 WL 2080480 \*5 (W.D.Pa. July 12, 2007)(stating that inmates  
23 have no federal constitutional right to purchase items from the commissary at any  
24 particular price or to have the commissary restrained from charging even  
25 exorbitant prices); and *Collins v. Virginia*, 2006 WL 1587467 \*1 (W.D.Va. June 6,  
26 2006) (stating that "inmates have no constitutionally protected interest in  
27 purchasing stamps, food substances, or any other good through the prison  
28 commissary at the cheapest price possible").

1 As such, summary judgment in favor of Defendants with respect to  
2 Plaintiff's due process claim is proper.

3 **C. Equal Protection**

4 Finally, Plaintiff alleges that his equal protection rights were violated. "To  
5 state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause  
6 of the Fourteenth Amendment a plaintiff must show that the defendants acted with  
7 an intent or purpose to discriminate against the plaintiff based upon membership in  
8 a protected class." *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9<sup>th</sup> Cir. 2001).  
9 Plaintiff has not demonstrated that he is a member of a protected class.

10 As such, summary judgment in favor of Defendants with respect to  
11 Plaintiff's equal protection claim is appropriate.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Defendants' Motion for Summary Judgment (Ct. Rec. 21) is  
14 **GRANTED.**

15 2. The District Court Executive is directed to enter judgment in favor of  
16 Defendants and against Plaintiff on Plaintiff's Section 1983 claims.

17 3. The Court declines to exercise supplemental jurisdiction over Plaintiff's  
18 state law claims.

19 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
20 enter this order, furnish copies to Plaintiff and counsel, and **close the file.**

21 **DATED** this 19<sup>th</sup> day of April, 2010.

22  
23 s/Robert H. Whaley

24 ROBERT H. WHALEY  
25 United States District Judge

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